

PERSONNEL

MERIT SYSTEM BOARD

Leaves, Hours of Work and Employee Development

Donated Leave

Proposed Amendment: N.J.A.C. 4A:6-1.22

Authorized By: Merit System Board, Marjorie A. Schwartz, Acting Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d) and 11A:6-1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-392.

A public hearing concerning the proposed amendment will be held on:

Thursday, November 18, 2004, at 3:00 P.M.

Merit System Board Room

44 South Clinton Avenue

Trenton, New Jersey

Please call the Legal Liaison Unit at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by December 17, 2004 to:

Henry Maurer, Director

Merit System Practices and Labor Relations

Department of Personnel

P.O. Box 312

Trenton, New Jersey 08625-0312

The agency proposal follows:

Summary

The donated leave program has worked well since its inception in 1993 in ensuring that employees who have exhausted their paid leave time, and are suffering from a catastrophic health

condition or injury, continue to receive paid leave during this difficult period. Since the rule's initial adoption, the Board has broadened the donated leave program to include employees who need the leave due to the health of the employee's fetus or to take care of a family member with a catastrophic health condition or injury. The Board also has done the following: made the program available to local employees, permitted employees to donate leave across departmental lines, made employees donating bone marrow eligible for donated leave, and defined the term "catastrophic health condition or injury." The definition, as provided in N.J.A.C. 4A:6-1.22(b), is as follows:

....With respect to an employee, a "catastrophic health condition or injury" is a life-threatening condition or combination of conditions or a period of disability required by his or her mental or physical health or the health of the employee's fetus and requiring the care of a physician who provides a medical verification of the need for the employee's absence from work for 60 or more work days.

...With respect to an employee's immediate family member, a "catastrophic health condition or injury" is a life-threatening condition or combination of conditions or a period of disability required by his or her mental or physical health and requiring the care of a physician who provides a medical verification of the need for the family member's care by the employee for 60 or more work days.

Unfortunately, the Merit System Board has been made aware of numerous instances in recent years in which appointing authorities have misinterpreted the definition of "catastrophic health condition or injury" by reading the definition more narrowly than the Board intended. In its notice

of proposal to amend the rule to include a definition of catastrophic health condition or injury, the Board explained: “Under this new definition, a catastrophic health condition or injury would mean either a life-threatening condition or combination of conditions, or a medically verified disability of at least 60 work days.” See 32 N.J.R. 3515(b) (emphasis added).

However, in denying an employee’s donated leave request, appointing authorities have sometimes required the employee to have both a life-threatening injury or illness and a doctor-certified need to be absent from work for 60 or more work days. Confusion has apparently been caused due to the inclusion of the two criteria, only one of which must be met to satisfy the definition of “catastrophic health condition or injury,” in the same paragraph. Therefore, the Board proposes an amendment to N.J.A.C. 4A:6-1.22(b), with respect to both an employee’s catastrophic health condition or injury, and that of the employee’s immediate family member, so that users of the rules will clearly understand that only one of the two criteria must be met to satisfy the definition.

As the Board has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Merit System Board expects that the proposed amendment to N.J.A.C. 4A:6-1.22 would have a positive social impact. The amendments would ensure that appointing authorities, merit system employees and other users of the rules understand the definition of “catastrophic health condition or injury” for purposes of donated leave eligibility. A misinterpretation on the part of the appointing authority or an employee would likely be avoided and help to ensure that an employee in

need of donated leave receives the leave in a timely fashion.

Economic Impact

It is anticipated that the proposed amendment to N.J.A.C. 4A:6-1.22 would have a positive economic impact on both employees and appointing authorities. Employees absent from work due to a catastrophic health condition or injury would be assured of receiving the donated leave when they need it. Among other things, their health insurance would be continued as if they were still at work and they would accrue seniority for layoff purposes as before. Appointing authorities with employees requesting donated leave would spend less time evaluating and processing such requests due to a clearer understanding of the definition of “catastrophic health condition or injury.”

Federal Standards Statement

A Federal standards analysis is not necessary for the proposed amendment to N.J.A.C. 4A:6-1.22. The proposed amendment concerns a donated leave program for New Jersey’s merit system employees and is governed solely by State law.

Jobs Impact

It is not anticipated that the proposed amendment would have any jobs impact. No jobs would be created or lost due to the proposed amendment.

Agriculture Industry Impact

It is not anticipated that the proposed amendment would have any agriculture industry impact. The proposed amendment concerns the donated leave program for New Jersey's merit system employees.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment would regulate employment in the public sector.

Smart Growth Impact

It is not anticipated that the proposed amendment would have any impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan as defined under Executive Order No. 4 (2002).

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

4A:6-1.22 Donated leave program

(a) A State employee shall be eligible to receive donated sick or vacation leave if the employee:

1. Has completed at least one year of continuous State service;
2. Has exhausted all accrued sick, vacation and administrative leave, all sick leave injury benefits, if any, and all compensatory time off;

3. Has not, in the two-year period immediately preceding the employee's need for donated leave, been disciplined for chronic or excessive absenteeism, chronic or excessive lateness or abuse of leave; and

4. Either:

- i. Suffers from a catastrophic health condition or injury;
- ii. Is needed to provide care to a member of the employee's immediate family who is suffering from a catastrophic health condition or injury; or
- iii. Requires absence from work due to the donation of an organ (which shall include, for example, the donation of bone marrow).

(b) For purposes of this section, a "catastrophic health condition or injury" shall be defined as follows:

- 1. With respect to an employee, a "catastrophic health condition or injury" is [a] either:
 - i. A life-threatening condition or combination of conditions; or [a]
 - ii. A period of disability required by his or her mental or physical health or the health of the employee's fetus [and requiring] which requires the care of a physician who provides a medical verification of the need for the employee's absence from work for 60 or more work days.
- 2. With respect to an employee's immediate family member, a "catastrophic health condition or injury" is [a] either:
 - i. A life-threatening condition or combination of conditions; or [a]
 - ii. A period of disability required by his or her mental or physical health [and requiring] which requires the care of a physician who provides a medical verification of the need for the family member's care by the employee for 60 or more work days.

(c) A State employee may request that the appointing authority approve his or her participation in the program, as a leave recipient or leave donor. The employee's supervisor may make such a request on behalf of the employee for his or her participation in the program as a leave recipient.

1. The employee or supervisor requesting the employee's acceptance as a leave recipient shall submit to the appointing authority medical verification from a physician or other licensed health care provider concerning the nature and anticipated duration of the disability resulting from either the catastrophic health condition or injury, or the donation of an organ, as the case may be.

2. When the appointing authority has approved an employee as a leave recipient, the appointing authority shall, with the employee's consent, post or circulate the employee's name along with those of other eligible employees in a conspicuous manner to encourage the donation of leave time, and shall provide notice to all negotiations representatives in that appointing authority.

i. If the employee is unable to consent to this posting or circulation, the employee's family may consent on his or her behalf.

(d) In State service, a leave recipient must receive at least five sick days or vacation days or a combination thereof from one or more leave donors to participate in the donated leave program. A leave donor shall donate only whole sick days or whole vacation days and may not donate more than 10 such days to any one recipient.

1. A leave recipient shall receive no more than 180 sick days or vacation days, and shall not receive any such days on a retroactive basis.

2. A leave donor shall have remaining at least 20 days of accrued sick leave if donating sick

leave and at least 12 days of accrued vacation leave if donating vacation leave.

3. A leave donor shall not revoke the leave donation.

4. If a leave donor is not in the same department or autonomous agency as the leave recipient, appropriate arrangements shall be made between the affected appointing authorities to verify donor eligibility and adjust leave records. However, the posting requirement set forth in (c)2 above is limited to the recipient's appointing authority.

(e) While using donated leave time in State service, the leave recipient shall accrue sick leave and vacation leave and be entitled to retain such leave upon his or her return to work.

1. Any unused, donated leave shall be returned to the leave donors on a prorated basis upon the leave recipient's return to work, except that if the proration of leave days results in less than one day per donor to be returned, that leave time shall not be returned.

2. Upon retirement, the leave recipient shall not be granted supplemental compensation on retirement for any unused sick days which he or she had received through the leave donation program.

(f) A State employee shall be prohibited from threatening or coercing or attempting to threaten or coerce another employee for the purpose of interfering with rights involving donating, receiving or using donated leave time. Such prohibited acts shall include, but not be limited to, promising to confer or conferring a benefit such as an appointment or promotion or making a threat to engage in, or engaging in, an act of retaliation against an employee.

(g) In local service, an appointing authority may establish a donated leave program which shall be consistent with the provisions of (a) through (f) above, with approval of the Commissioner.

1. The appointing authority shall submit to the Commissioner a donated leave program

proposal no later than 30 days before the planned implementation of the program. The proposal shall include a summary of consultations with affected negotiations representatives concerning the program and name the donated leave program administrator for the appointing authority.

2. The appointing authority shall not implement a donated leave program unless the program has been approved by the Commissioner.

3. The appointing authority shall retain all records concerning implementation of an approved donated leave program subject to Department of Personnel audit.

4. The appointing authority may suspend or terminate the donated leave program at any time upon 30 days written notice of such suspension or termination to the Commissioner, all affected employees and labor negotiations representatives.